



Planning Development Management Committee

Report by Development Management Manager

Committee Date: 17 June 2021

Site Address:	11 Earn's Heugh Crescent, Aberdeen, AB12 3RU,
Application Description:	Installation of fence to side (part retrospective)
Application Ref:	210427/DPP
Application Type	Detailed Planning Permission
Application Date:	26 March 2021
Applicant:	Mr Shaun Archibald
Ward:	Kincorth/Nigg/Cove
Community Council:	Cove and Altens
Case Officer:	Roy Brown



RECOMMENDATION

Refuse

APPLICATION BACKGROUND

Site Description

The application site comprises a modern single storey detached bungalow and its front and rear curtilage in a suburban residential area in Cove. The dwelling has a southern facing principal elevation.

Earn's Heugh Crescent wraps around the application site to the east, southeast and south. The application site is bounded by 15 Earn's Heugh Crescent to the north and 9 and 7 Earn's Heugh Crescent to the west. A public footpath is located directly to the east of the site beyond Earn's Heugh Crescent, which provides a pedestrian route from this street and the wider area to the Loirston Annexe and beyond.

A garage is located in the northwest corner of the rear curtilage and the curtilage has driveways to its south and northeast. A c.1.9m high fence has been erected on the east boundary (fronting Earn's Heugh Crescent) and as a return between the principal elevation and this boundary. It does not have planning permission and is currently unauthorised.

Relevant Planning History

Planning permission was refused for the installation of the fence to the side of the property (retrospective) on the 17th December 2020 (Ref: 200756/DPP) because it was considered that:

- Because of its height, siting on, and length around the vast majority of the public boundaries of the site, and the fact that there are no similar boundary treatments bounding the public facing curtilage on Earn's Heugh Crescent, the fence appears unduly prominent on the streetscape to the detriment of the character and amenity of the surrounding area.
- The fence adversely affects public safety by adversely affecting the visibility between vehicles on Earn's Heugh Crescent, driveways accessing Earn's Heugh Crescent; and pedestrians crossing the road to access the public footpath to the east.
- Approval could set an unwelcome precedent for similar boundary enclosures in the surrounding area, which would be significantly detrimental to the character and amenity of the surrounding area and public safety.
- It conflicts with the relevant policies of the Aberdeen Local Development Plan and its Supplementary Guidance.

APPLICATION DESCRIPTION

Description of Proposal

Planning permission is sought retrospectively for the erection of the existing c.1.9m closed panelled timber fence in the curtilage of the dwelling. The previous c.1m high boundary wall was removed to facilitate the development.

The fence extends c.22m in length along the east boundary and c.4.3m in length on its return which aligns with the building line of the south facing principal elevation. Planning permission is sought for the erection of a further c.8.3m long, c.1.9m high fence along the northern boundary of

the plot between the building line of the east elevation of the dwellinghouse and the eastern boundary.

The plans indicate that c.1.9m high fences would be located on the northern and western boundaries of the site behind the building lines of the south facing principal elevation and east facing side elevation. These would not require planning permission as they would be permitted development within the provisions of Class 3E of Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992, as amended. They are therefore not included in this application.

Supporting Documents

All drawings and supporting documents listed below can be viewed on the Council's website at:

<https://publicaccess.aberdeencity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=QQL0CVBZI1D00>

Supporting Statement (Prepared by Aurora Planning)

Describes the site; the planning / site history; discusses why the development should be supported; and includes photographs of the site and other fences.

Supporting Correspondence (Prepared by Aurora Planning)

Further correspondence justifying the proposal further with respect to character and visual amenity, arguing that there is a precedent for such development in the surrounding area.

Reason for Referral to Committee

The application has been referred to the Planning Development Management Committee (PDMC) because the application has been the subject of six or more timeous letters of representation (following notification) that express objection or concern about the proposal.

CONSULTATIONS

Roads Development Management (RDM) Team – No objection – Following an initial consultation, further consultation was undertaken which answers matters specifically raised by the local Community Council and representations. Approximate visibility splays created using the GIS System demonstrate that the proposal would not adversely affect visibility and, in the context of the street, whereby vehicles would be driving slowly, the fence is considered to not adversely affect road safety. RDM carried out a site visit and a video from this has been provided in their response.

It is noted that the footway crossing adjacent to the removed driveway at the northeast of the site must be reinstated to a standard footway at the expense of the applicant. This should be discussed with the Footway Crossing team.

Cove and Altens Community Council (CACC) – Objection – Undertook a site visit, which identified their road safety concerns.

Request PDMC to consider the significant negative impact of the height and length of the fence on road and public safety raised to them by the local residents most affected by this application (and the previous application). The roundabout at the end of Earn's Heugh Crescent is described as a 'natural traffic calming measure' by RDM. The fence poses an increased risk, on the bend, to public and road safety; it adversely affects visibility for pedestrians and drivers and vehicles exiting the driveway of 15 Earn's Heugh Crescent of the road and the footpath to the south.

Concern raised regarding the two differing positions by Roads officers with respect to the application. They concord with the position of the first assessment by Roads Development Management (RDM). CACC ask if officers have undertaken a site visit.

Photographs of the fence have not been submitted. The supporting evidence of other fences in the area do not pose similar road safety risks. They request photographs of the fence to be provided to PDMC.

CACC agrees with the reasons to refuse the previous application (Ref: 200756/DPP) in that it was considered detrimental to the character and amenity of the surrounding area and it could set an unwelcome precedent for boundary enclosures of a similar scale, height and design in the surrounding area, which would have a significantly impact on the character and amenity of the surrounding area and public safety.

REPRESENTATIONS

14 representations have been received. 9 of these are objections / representations expressing concern and 5 of these are in support. The matters raised can be summarised as:

Matters of Concern

- Given its height, length and visual prominence, the fence would be inconsistent with policies H1 and D1 of the Aberdeen Local Development Plan (ALDP) and the Supplementary Guidance (SG), in terms of impact on neighbouring residential amenity and the scale and form of the fence being appropriate to its context and not detracting from the street scene.
- The fence affects the appearance of the corner and is not in-keeping with the character and amenity of the immediate surrounding area.
- The claim in the supporting statement that the proposal would not be overbearing to 15 Earn's Heugh Crescent is refuted by 15 Earn's Heugh Crescent because of its height and it would be beyond the front of that dwellinghouse.
- The height and siting of the fence introduces a safety risk as it adversely impacts the visibility between vehicles, cyclists, pedestrians, and children. Disagreement is made with the RDM response in that the road bend and the roundabout are considered by RDM to be traffic calming measures and there is no instruction for drivers to reduce their speed from 30mph. The representations in support are not from neighbours to the west of Earn's Heugh Crescent, where the fence impacts visibility.
- It is largely a resubmission of a previous refusal, and no changes have been made to alleviate these road safety concerns.
- It would set an unwelcome precedent for similar boundary treatment in the surrounding area.
- Clarity is sought regarding why the fence has not been removed, having been refused.
- The examples of other fences in the supporting statement are not consistent with the proposal in construction and do not affect road visibility. They do not justify an increased road safety risk.

- There are likely to be alternative means of improving the privacy and security of the property, as specified in the previous decision.

Matters Raised in Support

- The height and positioning of the fence does not adversely affect road safety because the street is a no-through road where vehicles drive slowly.
- The fence is necessary to afford the property privacy and safe play space for children.
- The fence is in-keeping with other fences in the surrounding streets and is built to a good standard.

MATERIAL CONSIDERATIONS

Legislative Requirements

Sections 25 and 37(2) of the Town and Country Planning (Scotland) Act 1997 require that where, in making any determination under the planning acts, regard is to be had to the provisions of the Development Plan and that determination shall be made in accordance with the plan, so far as material to the application unless material considerations indicate otherwise.

Aberdeen Local Development Plan (ALDP)

Policy D1 - Quality Placemaking by Design

Policy H1 - Residential Areas

Supplementary Guidance (SG)

The Householder Development Guide (HDG)

Transport and Accessibility

Proposed Aberdeen Local Development Plan (2020)

The Proposed Aberdeen Local Development Plan (Proposed ALDP) was approved at the Council meeting of 2 March 2020. A period of representation in public was undertaken from May to August 2020. The Proposed ALDP constitutes the Council's settled view as to what the final content of the next adopted ALDP should be, and is now a material consideration in the determination of planning applications. The Aberdeen Local Development Plan 2017 will continue to be the primary document against which applications are considered. The exact weight to be given to matters contained in the Proposed ALDP (including individual policies) in relation to specific applications will depend on whether –

- such matters have or have not received representations as a result of the period of representations in public for the Proposed ALDP;
- the level of representations received in relation to relevant components of the Proposed ALDP and their relevance of these matters to the application under consideration.

The foregoing can only be assessed on a case by case basis. The following policies of the Proposed ALDP are of relevance in the assessment of this planning application:

Policy D1 - Quality Placemaking

Policy D2 - Amenity

Policy H1 - Residential Areas

Other Material Considerations

Designing Streets

EVALUATION

Principle of Development

The application site is located in a residential area, under Policy H1 of the ALDP, and the proposal relates to householder development. Householder development would accord with this policy in principle if it does not constitute over development, adversely affect the character and amenity of the surrounding area, and it complies with the Supplementary Guidance, in this case the Householder Development Guide (HDG). Given this proposal solely relates to a domestic boundary fence, and it would thus not impact on the intensity of use of the site, or built footprint, the proposal would not constitute over development. The other issues are assessed in the below evaluation.

Impact on the Character and Visual Amenity of the Surrounding Area

To determine the effect of the proposal on the character of the area it is necessary to assess it in the context of Policy D1 of the ALDP. This policy recognises that not all development will be of a scale that makes a significant placemaking impact but recognises that good design and detail adds to the attractiveness of the built environment.

The HDG states that *'in all instances, the scale and form of boundary enclosures should be appropriate to their context and should not detract from the street scene as a result of inappropriate visual impact.'*

Given the application is partially retrospective, this assessment must consider what existed on the site prior to the erection of the existing fence. Earn's Heugh Crescent is largely characterised by the boundaries of curtilage which front the road as having c.1m boundary walls or no boundary treatment. The site previously had a low c.1m high boundary wall along its east/southeast boundary. The scale, siting and form of the previous boundary treatment was compatible with the surrounding suburban residential area and was an appropriate method of boundary treatment for the public facing boundaries of this property on a corner location. It did not have a detrimental impact on the visual amenity of the street scene.

Notwithstanding a timber fence design would be a compatible boundary treatment in principle in a domestic context, the c.1.9m height of the fences would not be compatible in this suburban context whereby they bound immediately onto the pavement of a public road. They extend forward of the building line of the principal elevation of 15 Earn's Heugh Crescent to the north, which detracts from the appearance of the streetscape. The height and siting of the boundary treatment detracts from the open and inclusive urban form of the streetscape of Earn's Heugh Crescent. Because of its height, siting on and length around the vast majority of the public boundaries of the site, the proposed fence appears unduly prominent on the streetscape, to the detriment of the character and visual amenity of the surrounding area, in conflict with the Supplementary Guidance: 'The Householder Development Guide' and the character of the surrounding area, in conflict with Policies H1 and D1 of the ALDP.

The Planning Statement counters the statement in the report of handling for the previous application (Ref: 200756/DPP), which stated that *'there are no fences of a similar height or on equivalent locations fronting the road in the immediate surrounding area'*, arguing that the proposal would be consistent with the character of the surrounding area as there are numerous similar fences on the street and in the immediate surrounding streets, and examples have been provided to demonstrate this. It is therefore argued that the proposed fence should also be supported, given one of the aims of the Supplementary Guidance is to foster greater consistency in decision making.

Notwithstanding every planning application is assessed on its own merits, it must be highlighted there are no examples of fences of such a height along the boundaries which front a road in the

surrounding area having been granted planning permission under current policies and guidance. As a general principle, the Supplementary Guidance: 'The Householder Development Guide' states the following:

'No existing ... alterations which were approved prior to the introduction of this supplementary guidance will be considered by the planning authority to provide justification for a development proposal which would otherwise fail to comply with the guidance set out in this document.'

The examples that have been included in the planning statements are long-standing examples with no record of planning permission having been granted. They therefore cannot be used to justify this development, which would conflict with the Householder Development Guide.

Nevertheless, most of the examples included are of a significantly different context to the application site, whereby the properties are of a different built form and orientation to the road, and many are of varying design, scale, height, and length. The majority are not visible in the context of the site and are not viewed in the same context in terms of their appearance on the streetscape. The streetscape of Earn's Heugh Road, an example provided in the Planning Statement, is of a significantly different context and urban form whereby the rear elevations of the properties and their rear curtilage are orientated towards Earn's Heugh Road. 1 Earn's Heugh Crescent is similar to the application property in terms of its orientation to the road on a corner and the detached bungalow form of the property, and it has a c.1.8m high fence along its public boundary. However, unlike the fence in this application, its fence only extends along part of the public facing boundary – approximately up to the rear elevation of the property, does not extend round the bend in the road and the fence does not interfere with the open setting of the road around the junction and the position of the dwelling in the street scene. The boundary wall of 94 Earn's Heugh Circle is significantly lesser in height than the development proposed.

Whilst there are indeed some examples of properties which have long-standing fences fronting the roads in the wider area, the vast majority of residential properties in the surrounding area do not. There are no other examples of fences of such a height fronting Earn's Heugh Crescent itself as the boundary treatment primarily comprises no boundary walls or c.1m walls and railings. This provides a residential streetscape with an open and inclusive setting. The completed fence would detract from this character and visual amenity of the surrounding area and would not reinforce the established pattern of development in the surrounding area, nor reflect local urban form, in conflict with the Supplementary Guidance: 'The Householder Development Guide' and the Policies H1 and D1 of the ALDP.

Notwithstanding every application is assessed on its own merits, the grant of planning permission in this application could set an unwelcome precedent for boundary enclosures of a similar scale, height and design in the surrounding area, which would have a significant detrimental impact on the street scene, and thus the character of the surrounding area, in conflict with Policies D1 and H1 of the ALDP.

Residential Amenity

The HDG states that *'proposals for boundary enclosures will not be permitted where they would result in an unacceptable impact upon the amenity of neighbouring dwellings.'*

The presence of the fence proposed on the north boundary would be overbearing to 15 Earn's Heugh Crescent, to the detriment of the residential amenity afforded to that residential property. This is because of its significant c.1.9m height; its close proximity, c.3m, to that dwellinghouse; its length along the entirety of the southern boundary of its front curtilage and because it would be located forward of the principal elevation of 15 Earn's Heugh Crescent, which was previously afforded an open outlook onto the public road.

It is recognised that the fences would not be of a height or siting that would adversely affect the privacy, sunlight and background daylight afforded to the neighbouring properties. The fences along the other boundaries would not be overbearing to any neighbouring property by any significant degree. However, for the reasons above, the proposed fence on the north boundary would be overbearing and thus adversely affect the residential amenity afforded to 15 Earn's Heugh Crescent, in conflict with the HDG, and Policies D1 and H1 of the ALDP.

Road Safety

The previous application (Ref: 200756/DPP) was refused on the basis that the development was considered to adversely affect public safety. Roads Development Management (RDM) objected to that application on the grounds that the fence could cause a road safety hazard. Notwithstanding this is a separate application, and is thus considered on its own merits, the previous decision is a material consideration in the assessment of this planning application.

To inform the assessment of the impact of the proposed fence on road safety, RDM have been consulted twice. They were firstly consulted when the application was submitted and raised no objection. They were thereafter consulted regarding the specific road safety issues raised by the representations and by CACC. RDM consider the development to not adversely affect road safety by any significant degree and have not objected following a site visit.

Particular consideration has been made of the impact on the visibility between vehicles and pedestrians on Earn's Heugh Crescent, particularly where parked vehicles are being overtaken on the bend; of vehicles accessing Earn's Heugh Crescent from the driveway of 15 Earn's Heugh Crescent and the parking area beyond to the north; and between pedestrians crossing the footway and vehicles on Earn's Heugh Crescent, particularly pedestrians that are crossing the road to access the public footpath to the east of the site on Earn's Heugh Crescent, which is used for accessing the Loirston Annexe (c.50m to the east of the site), other areas of Cove, and other public amenities beyond.

RDM measured approximate visibility splays using the GIS mapping system which found that, notwithstanding that the level of visibility between vehicles would be reduced, pedestrians crossing the road from the west from the public footpath are afforded sufficient c.25m of visibility to oncoming vehicles and the driveway of 15 Earn's Heugh Crescent would be afforded sufficient visibility. As such, the completed fence would not adversely affect road safety in such situations.

Earn's Heugh Crescent is a no-through road and there is signage informing vehicles of this upon entering the road. Notwithstanding its speed limit is 30mph, there is a curve in the road, it is of a residential character and 6m width with multiple accesses / driveways onto the road, there is a roundabout to its north, and it immediately curves after its junction with Earn's Heugh Circle. Vehicles are therefore likely to drive slowly and significantly less than 30mph.

Whilst the fence results in a reduction in forward visibility, albeit not to a significant degree that it would result in a significant safety risk, Designing Streets suggests that the reduction in forward visibility encourages an even lesser speed. In the context of the likely vehicle travel speed, the level of forward visibility is considered sufficient to not be a significant road safety risk. It is considered that drivers of vehicles would be afforded acceptable levels of visibility for the speed they would travel to overtake parked vehicles.

Notwithstanding it was determined in the previous application that the fence on the east boundary would cause a significant road safety risk and the proposal would reduce the visibility of vehicles on the road, in light of the approximate visibility splays, the information regarding the likely speed of vehicles evidenced by a site visit provided by RDM, the fence is not considered to adversely affect road safety to a significant degree that would warrant the refusal of planning permission.

Proposed Aberdeen Local Development Plan

Policy D2 of the Proposed ALDP requires development to ensure the provision of amenity, defined within the Proposed ALDP as 'the attributes which create and influence the quality of life of individuals or communities'. Paragraph 7.6 of the Proposed ALDP states that '*poor amenity can have detrimental impacts on health and wellbeing*'.

It is recognised that the proposal would enclose a substantial area of garden ground for the application property, which would be to the benefit of the privacy of that property, and thus their amenity.

However, it would equally adversely affect the immediate outlook, and thus amenity afforded to 15 Earn's Heugh Crescent. The enclosure of the public facing eastern boundary with such a high fence would also conflict with the aims of this policy, which states that development will be designed to '*have a public face to the street to ensure natural surveillance, and active street frontages*'. It is therefore considered that the proposal would, on balance, conflict with Policy D2 of the Proposed ALDP given the detrimental impact it would have on the residential amenity of the neighbouring property and the reduction in the natural surveillance of the street and its active street frontage.

Otherwise, in relation to this particular application, the policies in the Proposed Aberdeen Local Development Plan 2020 substantively reiterate those in the adopted Local Development Plan and the proposal is acceptable in terms of both Plans for the reasons previously given.

Matters Raised in the Planning Statement

Given the nature of the site on a corner, it is recognised that the application site has a significantly larger proportion of public facing curtilage relative to private enclosed garden ground to the rear, which is primarily used as a driveway, and the fences in this application enclose a substantial area of the usable garden ground, which is to benefit the residential amenity of the application property.

It was noted in the report of handling for the previous application (Ref: 200756/DPP) that planting in the curtilage could be an alternative means of enclosure which could facilitate a greater degree of privacy and perceived security for the property, would not require planning permission and could have a significantly lesser impact to public safety and the amenity of the street scene.

It is suggested in the Planning Statement that there are no practical alternatives for the fence on the eastern boundary and that planting would require undue time to grow. It must be highlighted that there is no evidence to suggest that mature planting, which would provide the immediate benefits to the application property, cannot be planted instead of a fence.

Given the proposal would adversely from the character and amenity of the surrounding area, and there are alternative means of improving the privacy and security of the property, this reason does not provide sufficient justification to warrant approval.

Matters Raised by Cove and Altens Community Council (CACC)

The PDMC is provided with all relevant details and information regarding the proposal, including this report of handling on the merits of the proposal, the written representations, consultation responses and the Officer recommendation. The PDMC will also have access to photographs of the site. It is for the PDMC to satisfy itself that it has sufficient information to make a decision on the application. PDMC cannot consider representations submitted for the previous application.

The matters raised with respect to the impact on the character, amenity and precedent have been addressed in the above evaluation and in the recommendation to refuse the application.

The matters raised in relation to road safety are detailed in the above evaluation under the heading, 'Road Safety' and through further consultation with RDM.

With respect to concern that there are two different opinions on this application by RDM, they are an independent consultee and the planning authority has no role in their consideration of whether to object to an application. However, it must be stated that RDM do not object to this application. They have addressed this matter in their consultation response and explained that their conclusion that the development does not adversely road safety was also agreed with the Traffic Management and Roads Operations teams. RDM also undertook a site visit in advance of their second consultation response.

Matters Raised in the Letters of Representation

The matters raised with respect to character and visual amenity of the surrounding area, the residential amenity of neighbouring properties, conflict with the relevant policies of the Development Plan, and precedent are addressed in the above evaluation and in the recommendation to refuse the application. Consideration of the alternative means of enclosure are included in the above evaluation.

The matters raised in relation to road safety are detailed in the above evaluation under the heading, 'Road Safety' and through further consultation with RDM. RDM have highlighted that they would never advise that children should play on the public road, even if the fence did not exist.

In terms of seeking to ascertain why the development has not been removed, the decision of the planning authority to take formal planning enforcement action is a separate matter that is not considered in this application.

RECOMMENDATION

Refuse

REASON FOR RECOMMENDATION

Because of its height, siting on, and length around the vast majority of the public boundaries of the site, and the fact that there are no similar boundary treatments bounding the public facing curtilage on Earn's Heugh Crescent, the fence appears unduly prominent on the streetscape to the detriment of the character and amenity of the surrounding area.

Given its proximity to the dwellinghouse of 15 Earn's Heugh Crescent, the height of the fence, and its length along the entirety of the southern boundary of its front curtilage, the proposed fence on the north boundary would be overbearing on, and thus adversely affect the residential amenity afforded to 15 Earn's Heugh Crescent.

Notwithstanding every planning application is assessed on its own merits, the grant of planning permission in this application could set an unwelcome precedent for boundary enclosures of a similar scale, height and design in the surrounding area, which would have a significantly detrimental impact on the character and amenity of the surrounding area.

The proposal therefore conflicts with policies D1 – Quality Placemaking by Design and H1 – Residential Areas of the adopted Aberdeen Local Development Plan 2017; Policy D1 – Quality Placemaking, D2 - Amenity and H1 – Residential Areas of the proposed Aberdeen Local Development Plan 2020; and the Supplementary Guidance: 'The Householder Development Guide'. There are no material planning considerations that warrant approval in this instance.